Reserved.

COURT NO.3

Criminal Misc. Application No. 288 of 2002.

Sri Vijay Bahadur Singh …Applicant

Vs.

Special Sessions Judge (Anti-Corruption) East,District Dehradun and anonther …Respondents

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Hon'ble Irshad Hussain, J.

This petition under section 482 of the Code of Criminal Procedure (hereinafter for short 'Code') has been filed for quashing the order dated 16.08.2002 passed by the learned Special Judge, Anti-Corruption, East, Dehradun. Order dated 15.01.2000 regarding cognizance taken thereof in the case and the order dated 15.04.2002 in respect of framing of charges passed by the learned Special Judge, Anti-Corruption, East, Dehradun have also been challenged through this petition.

Heard Sri R.P. Singh and Sri Dinesh Gahatori, learned counsel for applicant and Sri U.K. Uniyal, learned counsel for C.B.I.

Petitioner, an Income Tax officer is prosecuted for offences punishable under sections 420, 467, 468, 471, 120-B I.P.C. and section 13(2) and 13(1)(d) of the Prevention of Corruption Act.

The controversy being raised is as to whether valid sanction under section 19 of the Prevention of Corruption Act was accorded by the competent authority. In this case Sri Vijay Mathur is said to be

the sanctioning authority and the sanction dated 15.02.1996, Annexure-6 to the affidavit of the petitioner is, according to the prosecution, valid sanction in the case. Petitioner does not admit its validity and he raised contention to this effect right from the very beginning and this was the reason that when the Special judge, C.B.I., Dehradun went on to frame the charges in the case by order dated 15.01.2000 it was observed that the prosecution shall examine the sanctioning authority as its first witness and after this the issue of validity of the sanction order shall be adjudged.

As was observed above Sri Vijay Mathur said to be the sanctioning authority was produced as P.W.1 on 30.01.2002. Later on petitioner moved an application on 26.03.2002 under section 311 of the Code with a prayer that said witness may be summoned again for re-examination because certain relevant and important questions could not be put to him in cross-examination as on that day the petitioner was not present in the Court to assist his defence counsel. This application came up for hearing before the trial court which rejected it on 16.08.2002, Annexure-4 observing that P.W.1 had been cross-examined on all the relevant points. The learned trial Court also observed that if in the interest of justice it is felt necessary to re-examine P.W.1 necessary orders shall then be passed and at this stage the application under section 311 of the Code is not maintainable. The leaned trial Court thereafter posted the case for remaining prosecution evidence and it is evident that the controversy in regard to the validity of sanction was not taken up in the first instance, although in the circumstances of the case this goes to the root of the matter because petitioner will be entitled to immunity from criminal proceedings without sanction provided under section 19 of the Prevention of Corruption Act. Considering this, it will be just and proper to give a direction to the learned trial court to decide this issue before proceeding to record the other evidence of the prosecution because in the case after conclusion of the evidence and in the judgment it is found that the sanction is not valid, then the prosecution shall have to be given an opportunity to take steps, if they so wish, to

obtain fresh sanction so that the petitioner may be prosecuted for the offences alleged. If it so happen, it will cause much delay in the prosecution of the petitioner and it will be against the principle of speedy trial as guaranteed by the Constitution.

So far as the propriety of the impugned order dated 16.08.2002 is concerned it would have been just and proper to summon P.W.1 for his re-examination in view of the fact that certain relevant and necessary questions could not be put to him at the time of recording his evidence. It is not in dispute that on the date of the recording of the evidence of P.W.1 the petitioner was not personally present in the court and his personal appearance was exempted and due to this he could not properly assist his defence counsel on that date and some important questions could not be put to the witness. Petitioner had even submitted a list containing questions alongwith application under section 311 of the Code and since there appear to be some apparent difference of the date when the sanctioning authority signed the sanction order and when it was actually prepared initially it would be just and proper that P.W.1 be recalled for his re-examination.

Charge-sheet was submitted against the petitioner and cognizance was taken thereon on 21.04.1997 and there appear to be no illegality at this stage in the summoning order. The order of framing of charge also does not suffer from any infirmity or illegality and if the controversy in regard to the validity of sanction is to be taken before recording of other evidence in the case the purpose of the petitioner will be served and the petitioner shall not be put to injustice by undue delay and harassment. Considering this, these orders impugned do not warrant any interference.

For the above reasons the impugned order dated 16.08.2002 is hereby set aside and the learned trial court-respondent no.1 is directed to summon P.W.1, for re-examination at the expensed of petitioner, who shall be cross-examined only relating to the questions which were proposed per Annexure ‘Q’ to application under section 311 of the Code preferred by the petitioner. After re-examination of the

witness the learned trial court shall hear the parties on the controversy relating to the validity of the sanction and pass orders thereon and thereafter proceed to conclude the trial according to law. The petition is disposed of accordingly.

(Irshad Hussain, J.)

10.04.2003/B.